

Application No. 09/851,995
Amdt. Dated January 25, 2005
Reply to Office Action of December 2, 2004

Remarks/Arguments

Reconsideration is hereby requested.

This is a final action on remand from the Board of Patent Appeals. Claims 4 and 5 of record have been rejected as unpatentable over 35 U.S.C. 103(a) over Hobsen et al. in view of Capelli.

Herein, Applicant urges that nothing in the art of record teaches or suggests the subject matter positively recited in amended Claims 4 and 5. Capelli simply teaches that the use of partitions in hampers is known. As set forth in Claims 4 and 5, the instant invention for an integrated hamper/laundry basket contains not only partitions to separate different laundry types but also apertures within each sidewall having areas within a range not less than one-third and no more than two-thirds of the entire area of each sidewall. The Applicant discovered that a ratio of void space of the apertures to the area of each entire surface of the side walls of a laundry hamper must be at least one-third of the area of each such surface to ensure adequate aeration of the laundry within the hamper without compromise of structural integrity. The entire sidewall of the hamper must have a uniform distribution of apertures with less solid structural corners. And, for the purposes of strength and stability essential to the intended utility of the hamper, this ratio must not exceed two-thirds of each sidewall. Accordingly, there exists a specific range of area of the void space of the apertures in each sidewall to the total area of each sidewall that provides an

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optimum balance between aeration of the laundry therein and necessary structural integrity of the sidewalls themselves.

On the contrary, in Hobson et al.'s hamper the ratio of void space of the apertures to the area of each surface falls below the range desired. That is, Hobson et al.'s apertures occupy over 50% of each aeration panel, but each panel is about 50% of each entire sidewall. (See attached Hobson et al. Fig. 2 with markings). Therefore, the apertures of Hobson et al. make up only 25% of the entire sidewall. Also, support of the hamper in Hobson et al. is provided by rigid reinforced solid corners, not the aeration panels. As well, the aeration panels in Hobson et al. do not lie flat with the sidewall but are indented and set in from the sidewall. Thus, the apertures on the hamper of Hobson et al. are located on a panel within a sidewall, as opposed to a uniform distribution of apertures covering each entire flat sidewall, as in the Applicant's invention. (See attached Fig. 3 of Applicant's invention). Outside of such panels, Hobson et al. provides no aeration of laundry in the hamper.

In Hobson et al., if apertures of like size were placed on an entire side wall, as opposed to a panel within the sidewall, the hamper would collapse when filled with laundry. i.e., the large apertures found in Hobson et al., if placed on the entire sidewall, would create an unstable structure having too much air or void space. However, the Applicant maintains structural integrity by the use of a specific ratio of smaller apertures uniformly disposed within the larger surface of the entire sidewall.

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Also, Hobson et al. uses a thicker rigid wall as a frame having an aeration panel located within that wall. Such a rigid wall in combination with the aeration panel leads to a more complicated molding step. This in turn makes the design more expensive to manufacture and sell to consumers. In distinction, the Applicant's invention entails a uniform thickness of all sidewalls, creating a less costly product.

Accordingly, Applicant maintains that the invention as claimed is unobvious in view of the art of record, however combined. Further, neither reference of record contains any suggestion of combinability. In fact, there is by definition, no teaching of utility in Hobson et al. since one of skill in the mechanical arts would not particularly consider a design patent to solve a mechanical problem. For example, in IKO Chicago Inc. v. CertainTeed Corp., a design patent for an asphalt shingle was held not to be functional; "The function of a shingle is to provide roofing." 29 USPQ2d 1953, 1955 (N.D. Ill. 1993). The design patent of the shingle did not help or hinder its function, rather it made the shingle aesthetically pleasing. *Id.* The court stated that the fact that the pattern may mimic the appearance of wood shingles or fool the eye into believing a two dimensional product is not an aspect of utility or function. *Id.* The court held that the shadow lines provided beauty and ornamentation; and there was no evidence that they make the shingle a better roofing material. *Id.*

Similarly Hobson et al. may provide a hamper which functions to store laundry, but does the design does not disclose a particularly better or worse function of a hamper. Hobson et al. is a design patent for an aesthetically

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pleasing hamper and not a utility patent that takes into account the particular function of uniform apertures for better aeration and structural stability.

Claims 4 and 5, are thus unobvious in view of the prior art of record, and as such are allowable over all of record, however combined. Accordingly, Applicant urges withdrawal of the rejection of Claims 4 and 5 under 35 U.S.C. §103(a).

Respectfully submitted,
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1. 26.05
Date of Signature


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Enclosures:

1. Hobson et al. Fig. 2 with markings.
2. Applicant's Fig. 3 with markings.